IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9386 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IKBALBHAI ISMAILBHAI MIRZA @ PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner No(s).: 1.

Mr.P.D.Bhate, AGP for Respondent No(s).: 1, 2,3.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 09/08/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated

02.05.2005 passed by the Police Commissioner, Ahmedabad City in exercise of the powers conferred upon him under sub-section(1) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (“the Act” for short), as, the “immoral traffic offender” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to one criminal case which is filed under the Immoral Traffic (Prevention) Act.

3. Learned advocate appearing on behalf of the petitioner detenu has submitted that the detaining authority has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or likely to affect the maintenance of public order and merely because the petitioner is branded as “immoral traffic offender” he cannot be preventively detained under the Act unless his activities as

immoral traffic offender affect adversely or is likely to affect the maintenance of public order. It is submitted that solitary offence, being II CR No. 3010 of 2005 has been registered with DCB Police Station, Ahmedabad City under Sections, 3, 4, 5, 7 and 9 of the Immoral Traffic (Prevention) Act on 09.04.2005 and, therefore, the impugned detention order is required to be quashed and set aside.

4. On the other hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2.

5. Learned advocate appearing for the petitioner detenu has raised manifold contentions at the time of hearing. The first contention raised by the learned advocate appearing for the petitioner that only one incident is registered against the petitioner under the provisions of the Immoral Traffic (Prevention) Act and on that basis the detention order has been passed. In support of her contention, she has relied upon the decision of this Court (Coram :J.R.Vora,J)

in Special Civil Application No.3881 of 2005 and has submitted that one registered offence under the Immoral Traffic (Prevention) Act obviously cannot be said to be habitual in nature and repetitive tendency of human conduct to commit the same act in this respect. It is required to be noted that if the solitary incident is really disturbing the public peace or tempo of the public and having prejudicial effect in the society, and on such occasion, if ordinary law is not helpful to curb such activities of any person, then certainly, the detaining authority is justified in passing the detention order. In the present case, the petitioner is branded as “immoral traffic offender” within the meaning of Section 2(g) of the PASA Act. Section 2(g) of the PASA Act provides that a person who habitually commits or bets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956). The plain reading of Section 2(g) of the PASA Act makes it clear that the detaining authority is required to arrive at the subjective

satisfaction that the petitioner was habitually committing or abetting the commission of offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 which stands repealed vide Section 25 of the Immoral Traffic (Prevention) Act, 1956. In this view of the matter, from registration of solitary offence against the petitioner, the petitioner cannot be branded as habitually committing offence under the Act. Considering the facts and circumstances of the case as well as the judgment referred to above, the impugned detention order is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 02.05.2005 is quashed and set aside. The detenu Ikbalbhai Ismailbhai Mirza @ Patel is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

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